

Application No.: 10/085,885

2

Docket No.: 373722002400

REMARKS

Applicant's representative elects the claims of Group I, claims 1-51, with traverse. The pending claims are linked in this application pursuant to MPEP 809 and 809.03, and consequently all claims should be examined per MPEP 809. MPEP 809.03 states that "[t]he most common types of linking claims which, if allowed, act to prevent restriction between inventions that can otherwise be shown to be divisible, are ... (D) a claim to the product linking a process of making and a use (process of using)." The Examiner has noted in the Office Action the presence of claims drawn to a device, method of making a device, and use of a device. Applicant's representative therefore submits that all pending claims should be examined together. In addition, it appears that there would be no undue burden when searching the subject matter of all of the claims. Two of the three groups are found within the same class and subclass (class 385 subclass 16), and the third group is found in the same class and a closely-related subclass (class 385 subclass 15).

Applicant's representative notes the Examiner's statement that "[i]t should also be noted that the methods do not include a core for the waveguide, therefore the methods cannot be used to form the optical devices as they are claimed." This conclusion is erroneous, since each of the method claims recites that a core is present when practicing the method (independent claim 52 line 2, independent claim 58 line 2, and independent claim 60 line 2). Consequently, Applicant's representative requests withdrawal of the restriction requirement to the extent that the restriction requirement was based on the erroneous conclusion.

In the event that the Examiner does not examine all claims at this time, Applicants' representative notes that the MPEP, in directing examiners on properly dealing with restriction matters, states "should any linking claim be allowed, the restriction requirement must be withdrawn..." and the withdrawn claims must be fully examined for patentability (MPEP 809, 809.04). Consequently, should any of the linking claims be found allowable, the MPEP requires withdrawal of the restriction requirement and full examination of the remaining linked claims for their patentability.

pa-876322

Application No.: 10/085,885

3

Docket No.: 373722002400

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing (373722002400). However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: April 8, 2004

Respectfully submitted,

By 
Charles D. Holland
Registration No.: 35,196
MORRISON & FOERSTER LLP
755 Page Mill Road
Palo Alto, California 94304

(650) 813-5832

pa-876322